IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/09/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM

H.C.P.No.590 OF 2004

Daku Devi,
W/o. Baburam Choudhary,
35/15, Krishnappa Tank Street,
Kondithoppu,
Chennai 79. .. Petitioner

-Vs-

1. State of Tamilnadu,
rep. by Secretary to Govt.,
Public (SC) Department,
Fort St. George, Chennai 9.

2. Union of India,
rep. by Secretary to Govt.,
Ministry of Finance,
Department of Revenue,COFEPOSA Unit,
Central Economic Intelligence Bureau,
Janpath Bhavan VI Floor, Janpath,
New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.B. Kumar
Senior Counsel for
Mr.R. Loganathan

For Respondent-1 : Mr. Abudu Kumar Rajaratinam
Govt. Advocate (Crl.Side)

Respondent-2 : Mrs. Vanathi Srinivasan
ACGSC

:O R D E R

(Order of the Court was made by P.K. MISRA, J)

The wife of the detenu has filed this Habeas Corpus Petition challenging the order of preventive detention dated 6.4.2004 passed under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), hereinafter referred to as "COFEPOSA".

2. The grounds of detention dated 6.4.2004 indicate that the officers of Customs at Chennai on 12.2.2004 examined containers of export goods covered by nine shipping bills, which were filed under claim for draw back by the exporters M.J.Fabrics, Chennai. Such bills have been filed through Customs House Agent named M/s.Logistic Enterprises Ltd. As per the grounds of detention, the description declared in the shipping bills did not tally with the description of the goods actually found on examination, and therefore, the goods were seized. It was found that there was shortage of pieces of readymade garments as against the declared quantity, but on the declared value of the said shipping bills, which was inflated, the draw back amount was claimed. Thereafter, the Customs officials visited the premises of M/s.M.J. Fabrics at a particular address, which address was also given for two more export companies, namely, M/s.Om Tex and M/s.Raj Tex, but it was found that the premises were locked. The residential house of the detenu was searched on 13.2.2004 and certain documents were seized as per the mahazar. The officers also searched the shop of the detenu in the name of M/s.Pooja Fabrics, but no incriminating document was seized therefrom. On the very same day, i.e., 13.2.2004, statement of the detenu was recorded in Hindi under Section 108 of the Customs Act, wherein it was inter-alia stated that the detenu was the proprietor of M/s.M.J. Fabrics having office at No.87, M.C. Road, Manish Arcade, Room No.7, Second Floor, Chennai-21, without proper office and there was only a Post Box to receive postal deliveries. In the statement, it was further indicated that the detenu had taken an Importer and Exporter Code by giving false name, namely, Hitesh Joshi Dinesh Joshi and also indicated that the detenu had obtained Importer and Exporter Code in the name of M.J.Fabrics as a merchant exporter. As the detenu was not well versed in writing English, a broker had helped him in getting the IE Code number and opening a bank account. Further, the detenu purchased cheap quality readymade garments and exported more than 65 consignments in the name of M.J.Fabrics to M/s.Jaffer Enterprises, Colombo and cheap quality readymade garments were exported by highly inflating the value and misdeclaring the description and quantity in order to avail higher drawback. On the very same day, the detenu was arrested and remanded to custody by a Judicial Magistrate. Subsequently, a representation was received from the wife of the detenu, contending that the statement recorded was not a voluntary statement of the detenu and thereafter, a representation dated 3.4.2004 was made. Ultimately, the order of preventive detention was passed on 6.4.2004.

3. The order of preventive detention is being challenged on several grounds as follows :-
(a) The detenu does not know English as he had studied upto class V only and yet the translation of documents in Hindi, which was in English and which had been relied upon by the detaining authority, had not been furnished.
(b) The subsequent representation made by the detenu asking for translation copies of those relied upon documents was illegally rejected on

the ground that those documents were standardised documents and the detenu being a regular exporter, it is not necessary to serve translated copies.
(c) It is also contended that representations made by the petitioner at different stages had not been considered with due dispatch.
(d) It is further contended that the incidents relied upon by the detaining authority do not relate to the detenu, and there is some mistaken identity, and therefore, the order of preventive detention without considering all the relevant aspects, is vitiated.

4. A counter affidavit has been filed on behalf of Respondent No.2 , refuting the contention regarding undue delay in disposal of the representation. However, no counter has been filed on behalf of Respondent No.1.

5. A perusal of the order-sheet indicates that this petition was admitted on 5.5.2004 with a direction to issue notice returnable by 21.6.2004. Subsequently, when the matter was listed on 15.7.2004, a Division Bench had granted one week time for filing counter. It was indicated therein ... However, if the counter is not filed by then, the matter shall proceed without the counter. However, the matter was adjourned again on 22.7.2004. On 16.8.2004, the matter was again adjourned by two weeks to enable the respondents to file counter. The matter was again adjourned on 30.8.2004 to 10.9.2004 for filing counter. Ultimately, the matter was heard on 16.9.2004 and adjourned to 20.9.2004 For Orders and again, the same was adjourned to 21.9.2004 For Orders. However, no counter has been filed on behalf of Respondent No.1.

6. Even though several contentions have been raised as indicated earlier, we are confining our attention to the question relating to non-furnishing of translated copies of relevant documents as, in our opinion, the Habeas Corpus Petition is to be allowed on the said ground.

7. From the grounds of detention itself, it is apparent that the detenu was not conversant in English. As a matter of fact, the statement of the detenu, on the basis of which the grounds of detention was passed, was in Hindi. Such statement also indicates that the detenu does not know how to write English. The detenu himself had made a representation indicating that he does not know English and Hindi translation of several documents relied upon by the detaining authority should be furnished.

8. In the aforesaid background, the learned counsel for the petitioner has contended that non-furnishing of translated copies of the relied upon documents has the effect of vitiating the order of preventive detention, as it has prevented the detenu from making a purposeful and effective representation.

9. In AIR 1969 SC 43 (HADIBANDHU DAS v. DISTRICT MAGISTRATE, CUTTACK AND ANOTHER), it was observed :
 6. ... Mere oral explanation of a complicated order of the nature

against the appellant without supplying him the translation in script and the language in which he understood would in our judgment, amount to denial of right of being communicated the grounds and of being afforded the opportunity of making a representation against the order.

10. In (1981) 2 SCC 427 (LALLUBHAI JOGIBHAI PATEL v. UNION OF INDIA AND OTHERS), it was observed :-

17. A catena of decisions of this Court has firmly established the rule that one of the constitutional imperatives embodied in Article 2 2(5) of the Constitution is that all the documents and materials relied upon by the detaining authority in passing the order of detention must be supplied to the detenu, as soon as practicable, to enable him to make an effective representation. Recently, in Icchu Devi Choraria v. Union of India (1980)4 SCC 531, this Court reiterated the principle as follows:
... One of the basic requirements of clause (5) of Article 22 is that the authority making the order of detention must, as soon as maybe, communicate to the detenu the grounds on which the order of detention has been made and under sub-section (3) of Section 3 of the COFEPOSA Act, the words as soon as may be have been translated to mean ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention. The grounds of detention must therefore be furnished to the detenu ordinarily within five days from the date of detention, but in exceptional circumstances and for reasons to be recorded in writing, the time for furnishing the grounds of detention may stand extended but in any event it cannot be later than fifteen days from the date of detention. There are the two outside timelimits provided by Section 3, sub-section (3) of the COFEPOSA Act because unless the grounds of detention are furnished to the detenu, it would not be possible for him to make a representation against the order of detention and it is a basic requirement of clause (5) of Article 22 that the detenu must be afforded the earliest opportunity of making a representation against his detention. If the grounds of detention are not furnished to the detenu within five or fifteen days, as the case may be, the continued detention of the detenu would be rendered illegal both on the ground of violation of clause (5) of Article 22 as also on the ground of breach of requirement of Section 3, subsection (3) of the COFEPOSA Act. Now it is obvious that when clause (5) of Article 22 and sub-section (3) of Section 3 of the COFEPOSA Act provide that the grounds of detention should be communicated to the detenu within five or fifteen days, as the case may be, what is meant is that the grounds of detention in their entirety must be furnished to the detenu. If there are any documents, statements or other materials relied upon in the grounds of detention, they must also be communicated to the detenu, because being incorporated in the grounds of detention, they form part of the grounds and the grounds furnished to the detenu cannot be said to be complete without them. It would not therefore be sufficient to communicate to the detenu a bare recital of the grounds of detention, but of the documents, statements and other materials relied upon in the grounds of detention must also be furnished to the detenu within the prescribed time subject of course to clause (6) of Article 22 in order to constitute compliance with clause (5) of Article 22 and Section 3, sub-section (3) of the COFEPOSA Act.

18. In the instant case, the materials and documents which were not supplied to the detenu were evidently a part of those materials which had influenced the mind of the detaining authority in passing the order of detention. In other words, they were a part of the basic facts and materials, and therefore, according to the ratio of Icchu Devi case should have been supplied to the detenu ordinarily within five days of the order of detention, and, for exceptional reasons to be recorded, within fifteen days of the commencement of detention. In the counter-affidavit, it has not been asserted that these documents, which were not supplied, were not relevant to the case of the detenu.

11. Similar views have been expressed in number of decisions and it is unnecessary to refer to all those decisions, however, reference should be made to an unreported decision of a Division Bench of this Court in W.P.No.279/88 decided on 14.6.1988, with a view to refute the contention raised on behalf of the respondents. It was observed in the said decision :-
3. It is well-settled that along with the grounds of detention, the detenu must be served with copies of documents relied upon, referred to or considered by the Detaining Authority in the language known to the detenu in order to enable the detenu to make an effective representation. As pointed out by the Supreme Court in LALLUBHAI JOGIBHAT Vs. UNION OF INDIA (AIR.1981 Supreme Court page 728), Article 22(5) of the Constitution requires that the grounds of detention must be communicated to the detenu. Communicate is a strong word. It means that sufficient knowledge of the basic facts constituting the grounds should be imported effectively and fully to the detenu in writing in a language, which he understands. The whole purpose of communicating the grounds to the detenu is to enable him to make a purposeful and effective representation.
4. Admittedly, the petitioner knows Tamil only and the copy of the customs clearance card incorporating oral declaration made by her has not been furnished to her in Tamil. The explanation offered is that the customs clearance card is only a standardised form and there is therefore no necessity to give a Tamil copy thereof. This explanation is not acceptable. It is not the standardised form that is furnished to the detenu, but the form containing the oral declaration of the detenu. The customs clearance card incorporating the oral declaration of the detenu is an important document, which in effect sets the core of the allegations against her. As the detenu was not provided with the Tamil translation of the said document, she could not make effective representation. The order of detention cannot therefore stand.

12. In the aforesaid background of law, as emphasised in numerous decisions, the contention raised has to be appreciated.

13. In the present case, as already indicated, the materials on record indicate that the detenu was not conversant in English, even though he could sign in English. Even if a person is able to sign in English or write few letters in English, that does not mean that such person is conversant with the language. Even if a person may read something and he is in a position to write something, yet he may not be in a position to

effectively understand the contents of documents written. In the present case, the detenu has specifically asked for translation of English documents in Hindi. It is not disputed that the documents were relied upon by the detaining authority to come to a conclusion that there is necessity to detain the person under preventive detention. The authorities have rejected the request of the detenu on the pretext that those documents were in standardised form.

14. We have gone through the documents available in the booklet. After going through the documents, it cannot be said those documents are standardised forms. Even though some of them are printed formats, there were "written entries" which were relevant for the purpose of consideration of the question raised. The entries which were made had persuaded the detaining authority regarding the requirement for passing an order of detention. Therefore, unless those entries were made known to the detenu in the language known to him, it is obvious that he is deprived of his right in making an effective representation.

15. Learned counsel for the respondents has contended that at any rate those documents had been furnished by the detenu and since he is carrying on the business for several years, it must be concluded that he knew about the contents of those documents. There is nothing on record to indicate that in fact, the documents had been prepared by the detenu himself, even though the documents might have been prepared on his behalf.

16. Learned counsel for the respondents has also relied upon a Full Bench decision of this Court in support of his contention that the copies of standard documents need not be furnished. The decision in question is reported in 2002 (2) CTC 321 (ANSAR ALI v. THE STATE OF TAMIL NADU AND TWO OTHERS). The following question was formed by the Full Bench itself :

"Whether the failure on the part of the detaining authority to supply the Tamil translation of the documents like entries in the passport, boarding card, baggage check clearance card, air-ticket, etc., though asked for by the detenu, would vitiate the further detention and whether it can be held that such failure on the part of the detaining authority would amount to the breach of Art.22(5) of the Constitution of India which gives the detenu a right to make an effective representation?"

17. The Full Bench opined that none of those documents, the translations of which have not been supplied to the detenu, can be described as "relied upon" documents. On the other hand, the Full Bench held that those documents can be described as "referred to" documents. Therefore, relying upon the decision of the Supreme Court in AIR 1999 SC 618 (POWANAMMAL v. STATE OF TAMIL NADU), it was observed that there was no necessity to supply the translation of documents, which had not been relied upon. It was further observed :-

" The observations and more particularly the emphasised portion, which are applicable to the present case would, in our opinion, clinch the issue. The standard, printed and public documents like airticket, boarding card,

conditions printed on the passport, conditions of VISA, etc. which are of common nature are not required to be translated and in this case particularly they are not required to be translated at all. What is required to be translated is something in the nature of an entry if the information in that entry is relied upon in the grounds of detention. For example, in this case it was essential to give the translation of the boarding card because the detaining authority had relied on the fact that on the basis of the boarding card the detenu was travelling. Such translation was also rightly given, in our opinion, of the first and last pages of the passport because that showed the fact that the petitioner-detenu was the holder of an Indian-passport and it was on that basis th at he got the VISA but, we completely fail to follow as to how and in what manner would the standard printed instructions or the cautions or the general conditions on the passport or the VISA card are in any manner relevant for the present purpose much less for the purpose of making an effective representation. We are aware that it is not for this Court to decide as to for what purpose the detenu requires the documents. However, Powanammal case, cited supra, once for all settles the issue that it is only the relied upon documents or the parts thereof which would be required to be translated and supplied to the detenu if the detenu does not know the language in which the entries in the said documents appear. We, therefore, hold that in this case the aforementioned documents and more particularly the standard printed part of the public documents cannot be said to be the relied upon documents and are only referred documents then the petitioner-detenu would have to show prejudice. We fail to see as to what prejudice can be caused to the detenu by not providing the translations of the standard printed public documents which contents are common in those documents. In our opinion, there can be no prejudice and indeed the learned counsel was also not able to show any such prejudice on account of the failure of the detaining authority to supply the translations of the pages 49 , 50, 56, 57 and 61 of the paper-book demanded by the detenu and more particularly the English portion therein.

18. After carefully going through the aforesaid decision, particularly the portions extracted above, we fail to see how this decision would come to the aid of the respondents. By no stretch of imagination, the documents in question in the present case can be considered as standard, printed and public documents of common nature. On the other hand, the Full Bench itself has observed that since the Boarding Pass has been relied upon, a translated copy was required to be furnished, and had been rightly furnished. In our opinion, Hindi translated copy of documents in English, which contains several entries, on the basis of which detention order has been passed, should have been furnished to the detenu.

19. Learned counsel for the State, however, contended that the detenu knew English, and therefore, there was no necessity to furnish translated copies. In support of such contention, he has placed reliance upon the decision of the Supreme Court reported in 1990 Crl.L.J. 7 96 (KUBIC DARIUSZ v. UNION OF INDIA AND OTHERS). In the said case, even though the Supreme Court emphasised on the fact that translated copies of the relevant documents are to be furnished in a language known to the detenu, came to the conclusion that in fact the detenu knew English, and therefore, there was no necessity to furnish translated copy of the documents which were in English.

The Supreme Court noticed the fact that the detenu complained about his lack of knowledge in English nearly one month after the detention and the detenu did not complain at the time of service of grounds of detention that he does not understand them. It was also apparent from the grounds of detention that in the course of interrogation, he has answered the questions in English. The Supreme Court observed that many details peculiar to the detention had been indicated which could not have been known to the detaining authority unless it was told to the interrogators by the detenu. In several places, the detenue himself had corrected the statements putting appropriate English words and signing those corrections. Considering all the aspects, the Court came to the conclusion that he had working knowledge of English enabling him to understand the grounds.

20. In the present case, even the order of preventive detention itself indicates that the detenu was not conversant in writing English, which obviously implies that he was not capable of reading English. It is axiomatic that a person who does not know how to write English, cannot read English and similarly a person who does not know how to read English, cannot write English. The detenu himself had made a request for furnishing copies of the documents in Hindi. At that stage, such request was not rejected on the ground that the detenu knew English, but on the ground that the documents being in standardised form was well within his knowledge. If the authorities knew that the detenu knew English, they must have given that answer even in the very beginning. The specific assertion made by the petitioner in the Habeas Corpus Petition has not been challenged by filing any counter affidavit. Merely because the detenu signed in English in the representation or in other places, it does not mean that he was in a position to read and understand the language to such an extent to enable him to make an effective representation. Even the representation to which our notice has been invited by the learned counsel for the petitioner, clearly indicates that the detenu did not know how to read and write English. On the face of such unassailed materials, a mere contention raised at the hearing stage without any convincing supporting materials, cannot be accepted. In such view of the matter, the order of detention is liable to be quashed as non-furnishing of translated copies of relied documents relied upon by the detaining authority

himself has vitiated the order of detention.
21. In view of the above, it is unnecessary to deal with the other contentions raised by the Senior counsel for the petitioner.

22. For the aforesaid reasons, we quash the order of detention and the detenu is set at liberty forthwith unless he is required in any other connected case.

23. Before parting with the case, However, one aspect needs to be emphasised. The manner in which the Habeas Corpus Petition has been adjourned number of times on the request of the respondents for filing counter, is apparent from the earlier narration. Article 22 of the Constitution of India requires that a representation of the detenu is required to be disposed of without any unnecessary delay. It is of course true that

nothing is indicated in Article 22 about the necessity to dispose of the Habeas Corpus Petition as expeditiously as possible without any unnecessary delay by the High Courts. However, judicial notice can be taken of the fact that almost in all the High Courts, rules have been framed prescribing for early disposal of the Habeas Corpus Petitions since liberty of a person is involved. The Supreme Court has repeatedly observed that the right to a speedy trial is a fundamental right under Article 21 of the Constitution. There cannot be any doubt that such an observation is equally applicable to the disposal of Habeas Corpus Petitions. It is true that many of the matters cannot be dealt with expeditiously because of docket explosion in the High Courts. However, the duty of the detaining authority or the State in facilitating early disposal of the cases cannot be over emphasised. The State Government cannot delay the disposal of Habeas Corpus Petitions on the ground of filing counter. This is not to suggest that reasonable time for filing counter should not be granted. However, seeking repeated adjournments for filing counter obviously cannot be countenanced. The logic of making sincere attempts to expedite disposal of the representation of the detenu is equally applicable to expeditious disposal of Habeas Corpus Petitions.

Index : Yes
Internet: Yes

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To

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3. The Commissioner of Police,
Greater Chennai, Chennai 8.

4. The Public Prosecutor,
High Court, Madras.

5. The Superintendent,
Central Prison, Chennai.